

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Norberto Dueñas
Richard Doyle

**SUBJECT: MEDICAL MARIJUANA
PROGRAM**

DATE: June 30, 2016

INFORMATION

This memo is to provide the City Council with an update on several issues related to medical marijuana in San José and the City's Medical Marijuana Program, including packaging, edibles, vertical integration, and enforcement.

PACKAGING

On March 29, 2016, the City Council adopted a memo authored by Vice Mayor Rose Herrera giving direction to:

- (a) Continue working with manufacturers toward having childproof packaging for all marijuana products, including edibles.
- (b) Return to Council every three months with an information memorandum updating the progress of implementation of childproof packaging for marijuana products.

In addition, the City Council adopted a memo from Councilmember Ash Kalra giving direction to:

- (d) Delay final determination on details of packaging requirements until there is an opportunity for feedback from the State on how it is proceeding on these complex issues.

On June 27, 2016, Governor Edmund G. Brown signed SB 837, a budget trailer bill that included a number of updates to California's Medical Cannabis Regulation and Safety Act (formerly the Medical Marijuana Regulation and Safety Act). Among the updates is a requirement that "All manufactured and edible medical cannabis products shall be sold only in special packaging constructed to be child-resistant unless otherwise exempted by regulation."

The Act took effect on January 1, 2016. Implementation of the regulatory scheme and issuance of licenses is anticipated to occur before the end of 2018.

EDIBLES

On March 29, 2016 Council gave further direction to staff to:

- Explore adopting guidelines that may delegate the issue of edibles to the County Department of Environmental Health with possible enforcement features.
- Encourage the County to have a Study Session on Marijuana Edibles with City of San José residents encouraged to attend.

Staff continues to collaborate with the County on a variety of issues, including the issue of edibles manufacture. Staff has passed on Council's recommendation regarding a County Study Session on edibles to County staff.

Currently none of the Registered Collectives in San José are manufacturing edibles, nor do any have active building permits to build commercial kitchen facilities for manufacturing edibles. Should any move forward on this front, staff would work closely with the Department of Environmental Health to ensure compliance with state health and safety laws.

In addition, the State of California, through the California Department of Public Health, is in the process of developing regulations for the manufacture of medical cannabis products, including edibles. Once these regulations are in place, it is likely that enforcement will happen at the county level, as is the case with enforcement of state health and safety laws such as those protecting the consumer and public from food-borne illnesses, contamination of the drinking water supply, and childhood lead poisoning. This would eliminate need for any delegation of authority on this issue.

The City will continue to monitor and participate in the state's rulemaking process and to collaborate with the County as we do.

VERTICAL INTEGRATION

The memo from Councilmember Kalra approved on March 29, 2016 included direction to staff to continue "Lobbying the State in order to allow cities to preserve vertical integration as part of local control."

San José's medical marijuana regulatory ordinance, adopted by Council on June 17, 2014, requires that medical marijuana establishments in the City cultivate and manufacture the medical marijuana products that they provide to their patient members. This approach is commonly called "vertical integration."

The Medical Marijuana Regulation and Safety Act originally included two options for vertical integration:

1. 10A License: Vertically integrated medical marijuana establishments would be allowed to apply for a 10A license, under which a licensee may have up to three dispensaries, one licensed manufacturing site, and up to four acres total canopy of licensed cultivation;

2. Grandfather Clause for Cities with Vertical Integration: The original legislation allowed licensure beyond the 10A license in cities with vertical integration in place. The language of this exemption had several requirements, including two milestone dates:
 - a. The jurisdiction's ordinance had to be on the books by July 1, 2015; and
 - b. The business had to be cultivating, manufacturing, and dispensing medical cannabis or medical cannabis products on July 1, 2015, and to have continuously done so since that date; and if the business was cultivating or manufacturing outside the bounds of the local jurisdiction, cultivation and manufacturing were required to have commenced prior to July 1, 2015.

While San José's zoning and regulatory ordinances were adopted on June 17, 2014, far in advance of the July 1, 2015 requirement, the regulatory ordinance gave collectives a year to come into compliance (July 17, 2015). On May 19, 2015, the Council extended that deadline by six months, to December 18, 2015. All of San José's 16 Registered Collectives achieved their Notice of Completed Registration from the City between December 14, 2015 and December 18, 2015. This meant that none would be eligible for state licensure under the grandfather clause.

Staff worked closely with the Governor's office, Senator Jim Beall and his staff, and multiple members of the state legislature to amend the compliance date to incorporate the City's program and our Registered Collectives. SB 837, signed by the Governor on June 27, 2016, amended the date to January 1, 2016. Registered Collectives in San José that meet all of the requirements of this section of the state statute will have the option to pursue this category of licensure.

ENFORCEMENT

Despite limited resources, to date, the City has been successful in obtaining the closure of at least 67 medical marijuana establishments operating in violation of the City's Program, either voluntarily or following compliance actions taken by the City.

The City is currently involved in litigation that is pending against medical marijuana establishments listed in the table below:

Business Name & Address	Case Status
San Jose Organics 88 Tully Road	Closed after the Superior Court granted the City's request for a Preliminary Injunction requiring the establishment to cease all operations related to medical marijuana. San José Organics then sought a Writ in the 6 th District Court of Appeal to overturn the Preliminary Injunction and the Court of Appeal denied the request. On January 22, 2016, San José Organics stipulated to a Permanent Injunction prohibiting the establishment and its agents from operating in the City.

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Business Name & Address	Case Status
<p>Platinum Society 1174 Lincoln Avenue</p>	<p>Closed after the Superior Court granted the City's request for an Injunction requiring the establishment to cease all operations related to medical marijuana. The parties then entered into a Stipulated Preliminary Injunction prohibiting Platinum Society from distributing medical marijuana or medical marijuana products. The business filed a Writ challenging the City's administrative citation, and that suit was dismissed in April 2016 following a settlement agreement that included a permanent injunction.</p>
<p>DABS 334 Commercial Street</p>	<p>Closed after being disqualified from the City's registration process. DABS subsequently filed a lawsuit in Superior Court challenging the City's Program. We are awaiting a decision on this challenge following a hearing on May 16 and subsequent briefing for the court.</p>
<p>Firehouse 1629 Almaden Road</p>	<p>Closed after being disqualified from the City's registration process. Firehouse subsequently filed a lawsuit in Superior Court challenging the City's disqualification of Firehouse and seeking injunctive relief to prevent the City from enforcing the provisions of its Program. The Court denied Firehouse's request and the matter is pending in Superior Court. Firehouse reopened, and the hearing on the City's petition for a preliminary injunction to close the business is set for July 29.</p>
<p>SV Care 1711 Hamilton Avenue and 2591 S. Bascom Avenue</p>	<p>Closed after receiving an administrative order from the City directing SV Care to cease all operations related to medical marijuana. SV Care subsequently appealed the administrative order in Superior Court and the Superior Court denied its appeal. SV Care then filed an appeal in the 6th District Court of Appeal. This appeal is pending.</p>

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Business Name & Address	Case Status
<p>All-American Cannabis Club (A2C2) 3131 S. Bascom Avenue</p>	<p>After being warned by the City to cease operations, A2C2 continued operating. The City then filed a lawsuit against A2C2 in Superior Court seeking injunctive relief to prohibit the establishment's continued operations. On October 19, 2015, the Court issued an Order Granting the City of San José's request for a Preliminary Injunction. A stipulated permanent injunction is now in place against the business and property owner. The business filed a Writ challenging the administrative citation and order. That Writ was dismissed when the City's motion for judgment on the pleadings was granted on May 16.</p>
<p>Amsterdam's Gardens 2142 The Alameda</p>	<p>After being warned by the City to cease operations, Amsterdam's Gardens continued to operate. The City then filed a lawsuit against Amsterdam's Garden in Superior Court seeking injunctive relief to prohibit the establishment's continued operations. On October 5, 2015, the Court issued an Order Granting the City of San José's request for a Preliminary Injunction. Amsterdam's Garden appealed the decision to the 6th District Court of Appeal. That appeal is pending. The business has continued to fight the City's effort to obtain a permanent injunction. The retail business has been closed, but it is unclear if marijuana-related activity is continuing to occur at the property.</p>
<p>Blue Sky Care Center 3039 Monterey Road</p>	<p>After being warned by the City to cease operations, Blue Sky Care Center continued to operate. The City then cited the property owner and the property owner filed a lawsuit challenging the City's citation, to which the City has responded. The City also filed an action for injunctive relief against Blue Sky Care Center. The next court date in that action is September 8.</p>
<p>Fortune Wellness Center 2231 Fortune Drive</p>	<p>After being warned by the City to cease operations, Fortune Wellness closed its doors for business. However, the collective subsequently reopened and the City filed a complaint seeking injunctive relief against the establishment. A hearing on the request for a preliminary injunction to close the business is set for July 29.</p>

Business Name & Address	Case Status
<p>LeafLab, Inc. 738 Commercial Street</p>	<p>The City disqualified LeafLab from the City’s registration process and LeafLab continued to operate. The business has filed a Writ challenging that decision and the administrative record is being prepared. The City has filed a complaint in Superior Court seeking injunctive relief against the establishment and property owners. A hearing on the preliminary injunction is set for July 29. Settlement negotiations are ongoing with the property owners.</p>
<p>MediMarts 1851 Little Orchard Street</p>	<p>The City disqualified MediMarts from the City’s registration process for failure to pay the City’s Marijuana Business Tax, but MediMarts continued to operate. The City then filed a lawsuit against MediMarts for the collection of the City’s Marijuana Business Tax and a separate lawsuit seeking to enjoin its continued operation. MediMarts applied for a preliminary injunction to prohibit the City from taking action against the establishment. On June 9, 2015, the Court denied MediMarts’ application for injunctive relief and MediMarts appealed the denial to the 6th District Court of Appeal. The appeal is pending. In the meantime, the City has pursued an abatement action against this business. It is expected that a hearing for a preliminary injunction to close the business will be set in July, 2016.</p>

The City is also taking enforcement action against the following operators:

Business Name & Address	Case Status
<p>O.N.A.C. for South Bay 265 Meridian Avenue, #9</p>	<p>On January 8, 2016, the City issued this establishment a pre-cite letter warning the establishment to cease operations or risk enforcement action by the City. The establishment continued to operate and on January 25 and January 26, the City issued an administration citation to both the operator of the establishment and the property owner for \$10,000 each. The City will continue to pursue enforcement action against the establishment.</p>

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Business Name & Address	Case Status
Delta 9 Association 1948 Alum Rock Avenue	On January 5, 2016, the City issued a pre-cite letter to the property owner. The establishment continued to operate and Code issued an administrative citation. Enforcement, including a request for injunctive relief, is being pursued against the establishment.

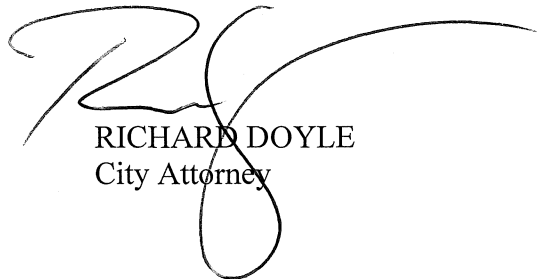
In addition to the above, a number of medical marijuana establishments are illegally operating as delivery services in violation of the City's Program. The City will be taking appropriate enforcement action against those businesses, which may include legal action in Superior Court, the imposition of fines of \$10,000, for the first violation; \$25,000, for the second violation; and \$50,000, for the third and each subsequent violation; and, referral to the District Attorney.

COORDINATION

This memorandum was coordinated with the San José Police Department and Department of Planning, Building and Code Enforcement.



NORBERTO DUEÑAS
City Manager



RICHARD DOYLE
City Attorney

For questions regarding this memorandum or to report a non-compliant medical marijuana establishment or operator, please contact either Sgt. David Woolsey, San José Police Department, at (408) 277-4115 or Michelle McGurk, Senior Executive Analyst, Office of the City Manager, at (408) 535-8254.